

Federal Appropriations and Fiscal Law

US Army Medical Research Acquisition Activity

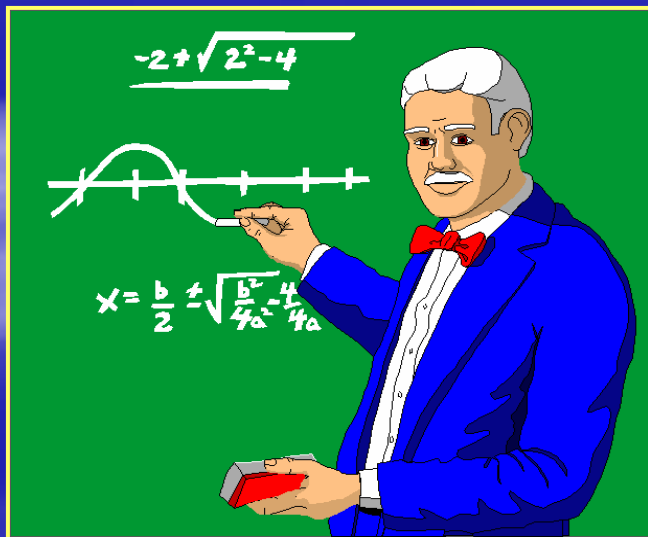
5 Topics

Purpose: *Promotional Items*

Time: *The Bona Fide Need*

Rule and “No Cost Extensions”

Amount: *“Incremental
Funding” and ADA
Reports*



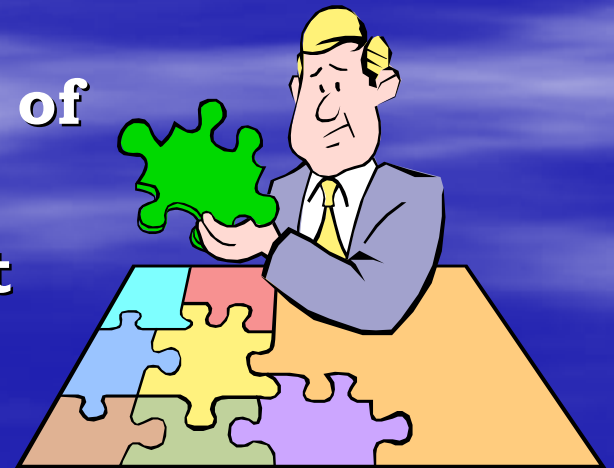
Federal Appropriations and Fiscal Law

“Fiscal Law”

...on the evils-great evil...which resulted to the public interest from the practice, particularly in the War Department, of permitting funds to be diverted from one object of appropriation and applied to another. Rep. John C. Calhoun, 1816

What is Fiscal Law? Appropriation, or Fiscal, Law, is about the “availability” of appropriations.

**“Available” in terms of
Purpose,
Time, and Amount**



Federal Appropriations and Fiscal Law

Are funds available to help the Contras fight Communism in Central America?

Are funds available for the US to participate in the building of a two-lane, all-weather road through the Bosnian controlled corridor between the Bosnian capital of Sarajevo and the Bosnian city of Gorazde, which road has been agreed to by the all the signatory nations, to include the United States, in the Dayton Peace Accord?

Are funds available to buy mouse pads with MRMC logo on it to give to the public; or uniforms for civil servants who are specifically authorized government-purchased clothing; or for refrigerators and microwaves for the office break room?

Federal Appropriations and Fiscal Law

Sources of Fiscal Law- Annual Legislation: Authorization and Appropriation Acts

That there be appropriated for the service of the present year the following sums, viz. A sum not exceeding two hundred and sixteen thousand dollars for defraying the expenses of the civil list, under the late and present government; a sum not exceeding one hundred and thirty-seven thousand dollars for defraying the expenses of the department of war; a sum not exceeding one hundred and ninety thousand dollars for discharging the warrants issued by the late board of treasury, and remaining unsatisfied, and a sum not exceeding ninety-six thousand dollars for paying the pensions of invalids. Act. Of Sept. 29, 1789, ch. 23, 1 Stat.95

Authorization Legislation

Appropriation Legislation

Federal Appropriations and Fiscal Law

For expenses, not otherwise provided for, for medical and health care programs of the Department of Defense, as authorized by law, \$20,221,212,000, of which \$19,299,787,000 shall be for Operations and Maintenance, of which not to exceed 2 percent shall remain available until September 30, 2007; and of which up to \$10,212,427,000 may be available for contracts entered into under the TRICARE program; of which \$379,119,000, to remain available for obligation until September 30, 2008, shall be for Procurement; of which \$542,306,000, to remain available for obligation until September 30, 2007, shall be for Research, Development, Test and Evaluation: Provided, That notwithstanding any other provision of law, of the amount made available under this heading for Research, development, test and evaluation, not less than \$5,3000,000 shall be available for HIV prevention educational activities undertaken in connection with United States military training, exercises, and humanitarian assistance activities, conducted primarily in African nations. Title VI, Defense Health Program, FY 2006 Defense Appropriation Act, Pub. L. 109-148 .

Federal Appropriations and Fiscal Law

The following sums are hereby appropriated,...for the several departments...of Government for fiscal year 2007,...namely:

SEC. 101.(a). Such amounts as may be necessary under the ...applicable appropriations Act for fiscal year 2006 for continuing projects or activities...that were conducted in fiscal year 2006, and for which appropriations...would be available in the following appropriations Acts:...

(c). The activities referred to in subsections (a) and (b) are the following activities of the Department of Defense:...

(4). Activities under the "Defense Health Program" account....

SEC. 106. Unless otherwise provided...appropriations and funds...shall be available until whichever of the following first occurs: (1) the enactment into law of an appropriation for any project or activity provided for in this division; (2) the enactment into law of the applicable appropriations Act by both Houses without any provision for such project or activity; or (3) November 17, 2006.

This division may be cited as the "Continuing Appropriations Resolution, 2007". Title X, FY 2007 Defense Appropriation Act, P.L.

Federal Appropriations and Fiscal Law

Sources of Fiscal Law- Permanent Legislation

The “Purpose” Statute, 31 U.S.C. §1301

Appropriations shall be applied only to the objects for which the appropriations were made except as otherwise provided by law.

The “Bona Fide Need” Law 31 U.S.C. §1502(a)

The balance of an appropriation or fund limited for obligation to a definite period is available only for payment of expenses properly incurred during the period of availability, or to complete contracts properly made within that period of availability...

An Antideficiency Act 31 U.S.C. §1341(a)(1) “...may not...

(A) make or authorize an expenditure or obligation exceeding an amount available in an appropriation...; or (B) involve...government in a contract obligation for the payment of money before an appropriation is made unless authorized by law

Federal Appropriations and Fiscal Law
Availability as to Purpose

Determining the Purpose of an
Appropriation



- 1) Specific statutory designation, or “necessary and incident” to the general purpose of the appropriation; and**
- 2) Not otherwise prohibited by law; and**
- 3) Not funded in another appropriation**

Federal Appropriations and Fiscal Law
Availability as to Purpose

The “Necessary Expense Doctrine”

Reasonably necessary in carrying out the general purpose of the appropriation, or discharging an authorized agency mission or function.

Lump sum appropriations provide agencies with discretion

Purpose determinations are agency and fact-specific

Federal Appropriations and Fiscal Law

Availability as to Purpose

Interpreting the Appropriation

The Rule on Lump Sum Appropriations:

A fundamental principle of appropriations law is that where Congress merely appropriates lump-sum amounts without statutorily restricting what can be done with those funds, a clear inference arises that it does not intend to impose legally binding restrictions, and indicia in committee reports and other legislative history as to how the funds should or are expected to be spent do not establish any legal requirements on the agency, Cherokee Nation of Oklahoma v. Leavitt, 125 S. Ct. 1172, 1177 (2005)

That source [a Committee Report] at most indicates the intent of one committee of one Chamber of Congress – and realistically, probably not even that, since there is no requirement that committee members vote on, and small probability that they even read, the entire text of a staff-generated report. It is a legal fiction to say that this expresses the intent of the United States Congress. id., Scalia, concurring at 1183

Federal Appropriations and Fiscal Law

Availability as to Purpose

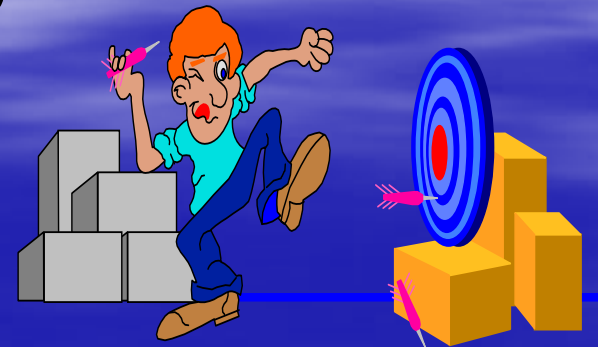
Examples:

Department of the Army—Purchase of Commercial Calendars,
B-211477, 62 Comp. Gen. 566 (1983).

Compare Use of Appropriated Funds for Employee Tax Return
Program, B-239510, 71 Comp. Gen. 28 (1991) with Federal
Executive Board—Appropriations—Employee Tax Returns—

Electronic Filing, B-259947, Nov. 28, 1995, 96-1 CPD ¶129

“The other federal agencies in New Orleans would have to show that the use of federal funds to pay for employees' electronic filing of tax returns is necessary or incidental to the objects of the appropriations to be charged.”



Federal Appropriations and Fiscal Law
Availability as to Purpose

Questionable Expenses: Promotional Items

These are expenditures that either “**get the message out**” – perhaps with a giveaway, or just a sign or kiosk – or to “**affect something**”

So – What are you trying to accomplish?

- 1) What specific authority (a law, an Executive Order, or Reg will) makes promoting this message, or doing this, a part of your mission?**
- 2) Does this authority allow/contemplate these type of give-a-aways?**
- 3). If the answers to #1 and #2) don't help, how does the item purchased - in all its detail (the words or symbols, information, etc., on it) somehow support the success of your mission?**

Federal Appropriations and Fiscal Law
Availability as to Purpose

Questionable Promotional Expenses

Give-Aways to federal employees

Give-Aways to the public

- **The RIID Mouse Pad**
- **Earth Day Bric-a Brac**
- **Technology Transfer Brochures and Candy Bars**
- **Ice Scrapers: “Don’t Risk It”**

Federal Appropriations and Fiscal Law
Availability as to Time

TIME

Basic Concepts



- Appropriations have either a definite end date for new obligations, or are indefinite (“no year”)
- Obligations must be for a “bona fide need” of their period of availability
- Appropriations become “expired.” Then – 5 years later – they are “closed.”
- Expired Funds can be used to fund “within scope” changes. Closed funds cannot be used – even if obligated!

Federal Appropriations and Fiscal Law
Availability as to Time

The Bona Fide Need Rule

**31 U.S.C. §1502(a): appropriation...limited
for obligation...for expenses properly
incurred during periods of availability.**

Example of a “bona fide need”: the printer

**The BFN need rules applies to IGRF and
Economy Act transactions!**



Federal Appropriations and Fiscal Law
Availability as to Time

The Bona Fide Need Rule

BFN Applied to Supply

**General Rule: BFN of fiscal period when
needed for consumption**

Exceptions:

- 1) Need, but delivery not possible this FY**
- 2) Production Lead-Time**
- 3) Stock Level-Exception**

Federal Appropriations and Fiscal Law

Availability as to Time

The Bona Fide Need Rule

BFN Applied to Services Contracts: The Concept of “Severability”

Severable or Non-Severable: “Most service contracts are severable. A non-severable contract would have a primary deliverable such as a prototype system or a completed report at the end of the performance period.”

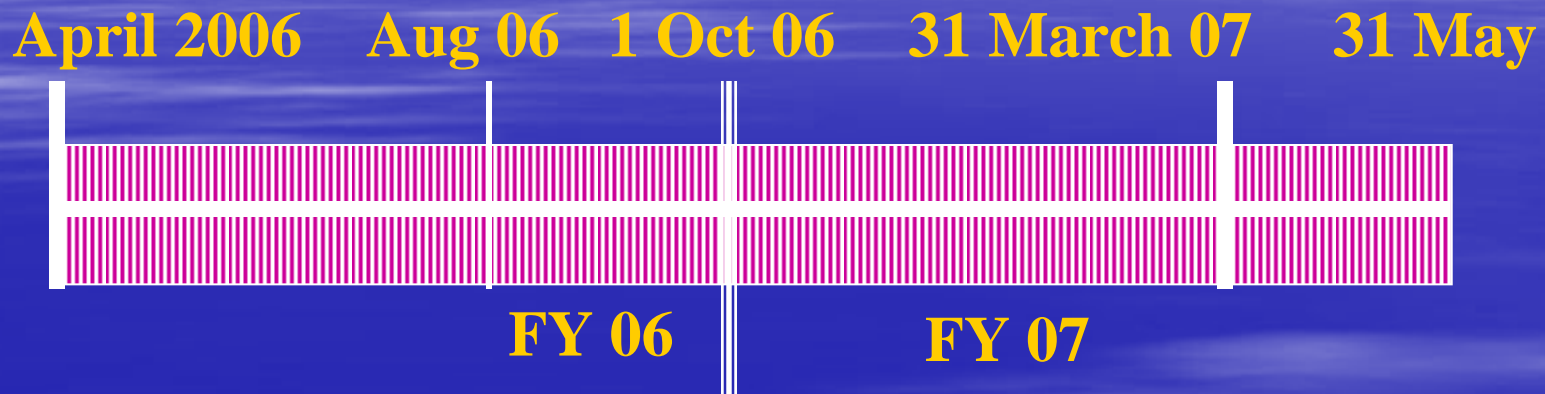
DoD Purchases made through the General Services Administration, D-2005-096, 29 July 2005

General Rule re Severable Services
General Rule Re Non-Severable Services



Statutory Exception: 12 Months Crossing Fiscal Years:
Example: 1 April 06 to 31 March 07 – all with 06 O&M!

“NO COST’ EXTENSIONS”



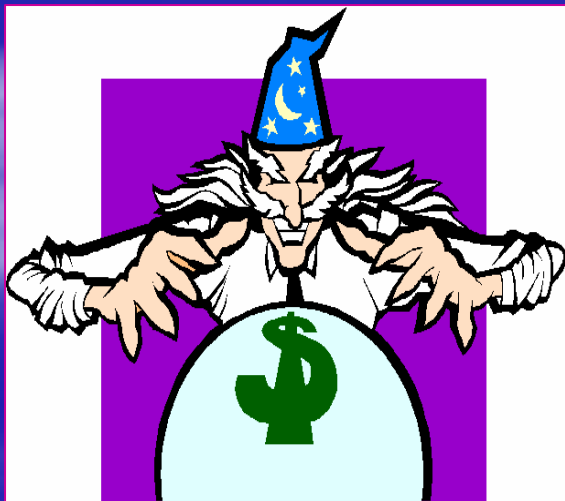
Problem #1: Contract is awarded in April 06 to provide 12 months of admin. support for \$120K – the 06\$ expires 1 Oct 2006. In Aug 06, another 24K of 06\$ added, and a mod is cut to extend POP two months thru May 07. The April/March 07 services are paid with the 06\$.

Federal Appropriations and Fiscal Law
Availability as to Time

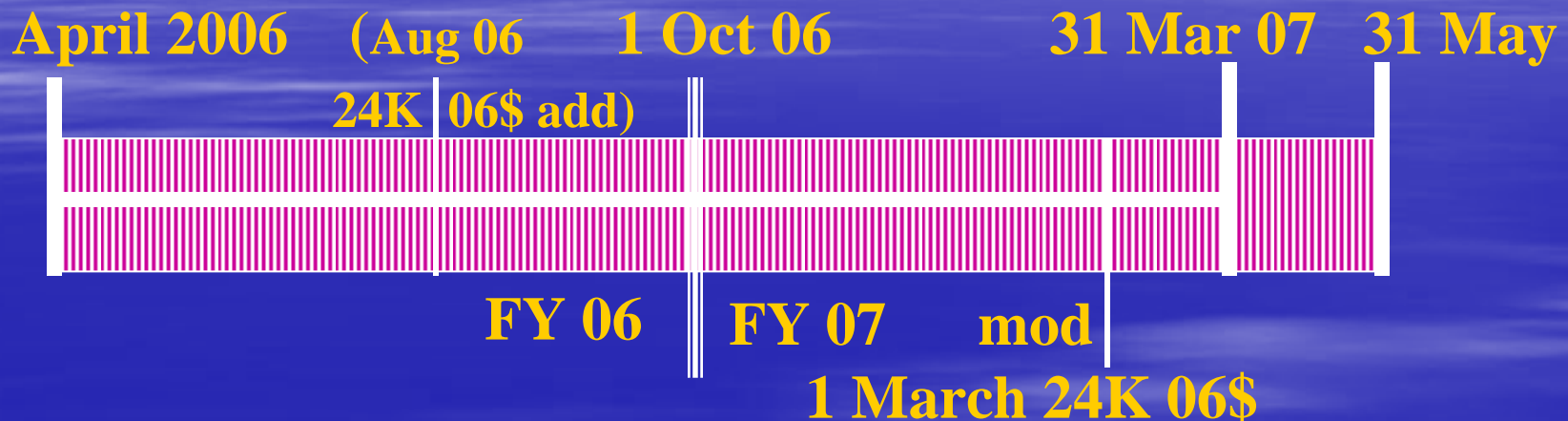
Money Magic: “No Cost Extensions”

Which of the following are true?

- **This is violation of the Competition in Contracting Act**
- **The mod is a “cardinal change,” and must be funded with the 07 appropriation**
- **The mod is a violation of the bona fide need rule.**
 - **This is an unlawful augmentation.**
 - **This is in an ADA violation.**



“NO COST’ EXTENSIONS”



Problem #2: Contract is awarded in April 06 to provide 12 months of admin. support for \$120K – the 06\$ expires 1 Oct 2006. In Aug 06, another 24K of 06\$ “is added to the contract,” - but the mod is cut on 1 March 07 to extend POP two months thru May 07. The April/March 07 is paid with the 06\$.

*Federal Appropriations and Fiscal Law
Availability as to Time*

Money Magic: “No Cost Extensions”

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Federal Appropriations and Fiscal Law

Availability as to Amount & The Antideficiency Acts

Amount

The “Antideficiency Acts”

The Antideficiency Act is not the formal Title of any statute, but has become the common name given to a number of statutory provisions codified in title 31, U.S. Code, that limit an agency's obligation and expenditure of funds to the amount Congress has appropriated. E.g., 31 U.S.C. 1341, 1342, 1349-1351 (relating to limitations on obligations and expenditures); 1511-1519 (relating to apportionments and administrative divisions of funds).

FFC Order, the ADA and Miscellaneous Receipts Statute,

B-303413, November 8, 2004



***Federal Appropriations and Fiscal Law
Availability as to Amount & The Antideficiency Acts***

Incremental Funding

The phrase is used in two ways:

The correct use is to describe the policy of not contracting for the whole project.

Incremental funding is the practice of providing budget authority for only a portion of an acquisition project.

Army Corps of Engineers – Improved Monitoring and Clear Guidance Would Contribute to More Effective Use of Continuing Contracts, GAO-06-966 (Washington, D.C.: September 2006)

The incorrect use is making an obligation in excess of the amount certified in the hope you'll get the money by the time the bills are due. This could result in an ADA violation.

***Federal Appropriations and Fiscal Law
Availability as to Amount & The Antideficiency Acts***

Amount

**Antideficiency Act Violation Reports for
FY 05 and 06 can be viewed at GAO.GOV
(under “legal products”)**

33 Reports (24 DoD/13 Army)

**Capital lease and other O&M/OPA issues;
Purpose (bottled water); Voluntary
Services, incl. Army Contracting
Command purchase of coins – as “gifts”
to graduates**